

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

JOHN POWERS

Plaintiff,

v.

No. 1:23-cv-00327-SM

TOWN OF DURHAM, NH,

Defendant.

DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant Town of Durham, by its attorneys, Jackson Lewis P.C. moves, pursuant to F.R. Civ. P. 56 and Local Rule 56.1, for this Court to enter judgment in its favor as to all counts of the First Amended Complaint of Plaintiff John Powers. In support of this Motion, Defendant states as follows:

- 1) The parties are in broad agreement as to the events at the heart of this case. The Court's consideration of this Motion turns on whether that evidence is sufficient to show that Powers' employment with the Town of Durham was terminated due to his longstanding disability which predated his hire for two tenures of employment with the Town and of which the Town was aware for over a decade prior to the alleged discriminatory acts.
- 2) Plaintiff has adduced no evidence which could enable a reasonable factfinder to conclude that Plaintiff has met his burden to show that the Town terminated Plaintiff's employment because of disability. Plaintiff did not make a request for accommodation sufficiently clear to trigger the Town's ability to respond, but even if he did, the Town granted his accommodation. Further, he cannot show that the Town's decision to order him to undergo a

fitness for duty exam was a violation of law and the grievance he submitted was invalid and untimely.

3) For these reasons, and for the reasons set forth in Defendant's accompanying Memorandum of Law in Support of Motion for Summary Judgment filed herewith, Defendant is entitled to judgment as a matter of law on all counts of Plaintiff's First Amended Complaint.

4) Due to the dispositive nature of this Motion, the concurrence of Plaintiff's counsel was not sought.

WHEREFORE, Defendant respectfully request this honorable Court:

- A. To grant its Motion for Summary Judgment;
- B. To grant it its costs and attorneys' fees; and
- C. To grant such other and further relief as this Court deems just and proper.

Respectfully Submitted,
TOWN OF DURHAM, NH
By its attorneys,
JACKSON LEWIS P.C.,

Date: March 14, 2024

/s/ Samuel H. Martin
K. Joshua Scott (NHBA# 17479)
Samuel H. Martin (NHBA# 272195)
JACKSON LEWIS P.C.
100 International Drive, Suite 363
Portsmouth, NH 03801
Phone: (603) 559-2700
Fax: (603) 559-2701
joshua.scott@jacksonlewis.com
samuel.martin@jacksonlewis.com

Certificate of Service

I hereby certify that a copy of the foregoing was this day served via the Court's electronic filing system on Gregory L. Silverman, Esq., counsel for Plaintiff, at gsilverman@dickinsonsilverman.com.

Date: March 14, 2024

By: /s/ Samuel H. Martin
Samuel H. Martin